

FIRST APPEAL No 1363 of 1995

MR. JUSTICE M.H.KADRI

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- JJJ

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

MER MULA KHIMA @ KHIRMANAND

Appearance:

MR. MR RAVAL, AGP for the appellants

MR.CL SONI with MR YATIN SONI for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR. JUSTICE M.H.KADRI

Date of decision: 17/02/99

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is instituted under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, is directed against judgment and award dated September 9, 1993 rendered by the learned Assistant Judge, Porbandar, in Land Acquisition Reference Case No. 64/88.

2. Survey No. 297/3 admeasuring 1 Hectare 56 Are 82 sq.mt. of village Miti was placed under acquisition pursuant to publication of notification on September 27, 1994 which was issued under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) for public purpose of Amipur Irrigation Scheme. The objections raised by the respondents were considered by the Land Acquisition Officer and a report under section 5A(2) of the Act was forwarded to the State Government. On consideration of the said report, State Government was satisfied that survey No. 297/3 of village Miti was needed for public purpose of Amipur Irrigation Scheme. Accordingly, declaration under section 6 of the Act was also published in Government Gazette. Thereafter the respondents were served with notices under section 9 of the Act for determination of compensation. The Land Acquisition Officer by his award offered compensation to the respondents at the rate of Rs. 90/- per Are. The respondents were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matter to the Court for determination of compensation. Accordingly, reference was made to the District Court, Junagadh, which was numbered as Land Reference Case No. 64/88. In the reference application, the respondent pleaded that having regard to fertility of the land acquired as well as the prevailing price of the agricultural lands situated nearby, they were entitled to compensation at the rate of Rs. 800/- per Are. The reference application was contested by the present appellants vide written statement Exh.12. In the reply, it was pleaded by the appellants that the market price was properly determined by the Land Acquisition Officer and as compensation offered to the claimants was just and adequate, reference application should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court. In order to substantiate the claim advanced in the reference application, the claimants had examined Mer Mulu Khimanand at Exh.24. The respondents also produced sale deeds at Exhs. 20, 21 & 22. It may be stated that neither oral nor documentary evidence was produced by the present appellants. On consideration of evidence led by

the claimants, the reference court held that sale deed Exh. 20 indicated that the price of land of village Miti was Rs. 120/- per Are; whereas other sale deeds indicated that the price of lands situated in the nearby villages was Rs. 187.50 ps. per Are at the relevant time. The sale instances were not reliable, as the parties were proven to fix the market value less than the actual prevailing market price in order to avoid payment of stamp duty. Relying on the evidence led by the claimants, the reference Court held that the net income from the sale of crops was Rs. 1600/- per Are and that it was proper to apply multiplier of 12.5 to the facts of the case. The reference court further held that the market value of the land acquired would be Rs. 1250/- per Are, but as the claimants have tendency to exaggerate income derived from the sale of crops, the market value of the land acquired should be assessed at Rs. 300/- per Are. In the ultimate decision, the reference Court has held that the claimants are entitled to compensation at the rate of Rs. 300/- per Are, by the impugned award giving rise to present appeal.

3. Mr. M.R.Raval, learned counsel for the appellants submitted that the compensation awarded by the Land Acquisition Officer was fair as well as adequate and, therefore, additional amount of compensation should not have been awarded by the reference court. It was stressed that no cogent and reliable evidence was led by the claimants to establish income derived by them from the sale of agricultural produces and, therefore, yield method should not have been adopted by the reference court for the purpose of ascertaining market value of the acquired land. It was asserted by the learned Counsel for the appellants that the method of arriving at net income derived from sale of crops was not only illegal, but not warranted by any of the methods known to law for the purpose of ascertaining market value of the acquired lands and, therefore, common award should be set aside. It was further stressed that in view of the judgments of the Supreme Court holding that 50% should be deducted towards cultivation expenses and multiplier of more than ten should not be adopted while ascertaining market value of the acquired lands on yield basis, the appeal filed by the State Government and another should be accepted. It was also stressed on behalf of the appellants that the claimants did not establish before the reference court that they were deriving particular income from sale of agricultural produces and, therefore, reference Court ought to have dismissed the reference application. In the alternative, the learned Counsel vehemently submitted that the claimants were not entitled to solatium on

additional amount of compensation payable under section 23(1-A) of the Act and, therefore, the direction given by the reference Court to pay solatium on additional amount of compensation payable under section 23(1-A) of the Act also deserves to be set aside.

4. Mr. C.L.Soni, learned Counsel for the claimants pleaded that oral evidence adduced by the claimants regarding quantity of crops raised as well as income derived from sale thereof was never challenged by the appellants and, therefore, the appeal which is directed against a just and reasonable award of the reference court should be dismissed. The learned Counsel for the claimants further highlighted that the sale instances were not available to enable the Court to determine market value of the acquired lands and, therefore, the reference court did not commit any error in placing reliance on the evidence of the claimants regarding income derived by them from the sale of agricultural produces while determining market value of the lands on the basis of yield. The learned Counsel produced order dated December 13, 1996 passed by the Supreme Court in Civil Appeal Nos. 16945-16964 of 1996 whereby determination of market value of the lands acquired in that case on the same basis as is adopted by the reference court in these cases, was upheld by the Supreme Court subject to direction to deduct 50% as cultivation expenses and to apply multiplier of 10 instead of 12. Placing reliance on said decision, it was submitted that the witness examined was found to be reliable by the reference Court and, therefore, this Court should not set aside determination of market value of the acquired land made by the reference Court on the basis of income derived from agricultural produces and the appeal should be dismissed.

5. We have heard the learned Counsel for the parties at length and also taken into consideration the record of the case. It is relevant to notice that agricultural lands of village Miti (Ghed), Taluka : Mangrol, District : Junagadh were placed under acquisition pursuant to publication of notification on December 1, 1971, which was issued under section 4(1) of the Act. The Land Acquisition Officer therein had determined market value of the lands acquired in that case at different rates for different lands. In some cases, he had determined market price at Rs. 3/- per Are; whereas he had determined market price at Rs. 88/- per Are in other cases. The claimants had sought references and claimed compensation at the rate of Rs. 625/- per Are. The reference court by common judgment and award dated September 15, 1993 had determined market price of the lands acquired in that

case at the rate of Rs. 325/- per Are. The copy of that award was produced by learned Counsel for the claimants for our perusal. It indicates that the reference Court had totalled the figure of income stated by witnesses examined on behalf of the claimants and determined market value after dividing said total by number of witnesses examined. Thereupon, the State of Gujarat and others had instituted First Appeals No. 2530/95 to 2549/95 challenging the said common award. The matter had come-up for hearing before the Division Bench comprising N.J.Pandya & S.K.Keshote, JJ. and the Division Bench had passed following order on September 22, 1995 :-

"The amount awarded by the trial court takes care of all the eventualities, when the basis is crop-yield method. He has, no doubt, noted that the witnesses are interested in giving exaggerated figures and he has also noted wide variations coming out of depositions of various claimants in the course of the deposition before the trial court. But, when on the basis of the data figure available with him he has reduced the Are value by slashing it down to almost one-third of the figure worked out on the basis of the material, there is no reason for this court to interfere. Hence, these appeals are rejected."

The order passed by the Division Bench was subjected to appeal before Supreme Court and Supreme Court in Civil Appeals No. 16945-16964 of 1996 passed following order on December 13, 1996:-

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 16945-16964 OF 1996
(Arising out of SLP (C) No. 13322-41 of 1996)

The State of Gujarat & Ors. ... Appellants

Vs.

Rama Rana & Ors. ... Respondents

O R D E R

Delay condoned. Leave granted.

We have heard learned Counsel on both sides. These appeals by special leave arise from the judgment of the Gujarat High Court, made on September 22, 1995 in F.A. Nos. 2532-2549/95.

A total extent of 68 hectares 62.5 sq.mts. of land was acquired for irrigation scheme by publication of the notification under section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short "the Act") on August 25, 1977. The Land Acquisition Officer in his award dated March 27, 1978 awarded compensation at the rate of Rs. 2023.50 ps. per acre for the dry crop lands, Rs. 3035.25 for the irrigated lands, Rs. 40.47 for the waste lands. On reference under section 18 of the Act, the Asstt. District Judge by his award and decree dated September 13, 1993 enhanced the compensation to Rs. 325/per acre to all the lands irrespective of the classification. On appeal, the High Court in the impugned judgment confirmed the same. Thus, these appeals by special leave.

The reference court proceeded on the premises that there are no sale deeds exhibited for determination of the compensation. Therefore, the oral evidence was relied upon to determine the compensation, on the basis of the yield. 8 witnesses came to be examined in proof of the yield of the acquired lands. One of the witnesses was the Sarpanch of the village and his evidence was accepted. The reference Court also found that the witnesses exaggerated the yield. On that basis, it determined the market value after deducting 1/3 towards prices at Rs. 325/- per acre. It would be common knowledge that expenditure would be involved in raising and harvesting the crops and that, therefore, on an average 50% of the value of the crop realised would go towards cultivation expenses. Therefore, deduction of 1/3rd was not correct in determining the compensation of the lands on the basis of yield.

It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agricultural Department as to the nature of the crops and the prices prevailing at that time. But, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. It is a fact that the Government have failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone.

The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e. whether he would be willing to purchase the land at the rates proposed by the Court. On the touch stone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. The reference Court has accepted the evidence of the Sarpanch to be the reliable person. Therefore, we proceed on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards cultivation expenses requires to be deducted. The award of the reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference Court at Rs. 2,050/as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50% towards cultivation expenses should be made. After giving deduction, the balance will be the net value of the land. On that basis, the claimants are entitled to Rs. 20,500/- per acre with solatium @ 30% on enhanced compensation and interest on enhanced compensation @ 0.9% per annum for one year from the date of taking possession and 15% per annum till date of deposit into the court under the Act as amended by Act 68 of 1984, namely 30% solatium on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9% and thereafter at 15% till date of deposit.

The appeals are accordingly, allowed. No costs.

Sd/-

(K. Ramaswamy, J.)

Sd/-

(G.T. Nanavati, J.)

New Delhi

December 13m 1996."

6. After the above referred to order was passed by the Supreme Court, the State of Gujarat and others had filed Review Petitions No. 1134-1153/97 in Civil Appeals No. 16945-16964/96 and following order was passed by the Court on August 4, 1997 :-

"SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Review Petition Nos. 1134-1153/97 In
Civil Appeals No. 16945-16964/96

State of Gujarat & Ors. Petitioners

Vs.

Rama Rana & Ors Respondents
(with appln.for c/delay in filing RPs and clarification)

Date: 4.8.1997

CORAM :

Hon'ble Mr. Justice S.C.Agrawal
Hon'ble Mr. Justice G.T.Nanavati

For the Appellant(s) :

Mr. Adhyaru Yashank Pravin, Adv.
Mrs. Hemantika Wahi, Adv.
Ms. Sumita Hazarika, Adv.

For the Respondent(s)

Mr. Ranjit Kumar, Adv.
Mr. H.A. Raichura, Adv.

UPON hearing Counsel the Court made the following

O R D E R

Delay condoned.

In the Order dated December 13, 1996 at page 3
for the words "the claimants are entitled to Rs.
20,500/per acre" the words "the claimants are entitled to
Rs. 10,250/- per bigha" shall be substituted. The
review petitions are disposed of with this modification.
No order as to costs.

Sd/- Sd/-
(Vijay Kumar Sharma) (Gopi Balauji)
Court Master Court Master

Signed order is placed on the file."

Thereafter, the State of Gujarat and others had

filed I.A. Nos. 41-60 in R.P.(C) Nos. 1134-1153/97 in C.A.Nos. 16945-16964/96 for clarification/modification of the order and those I.As. were dismissed by order dated March 17, 1998.

7. It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop and normally, the claimants should produce the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at the relevant time. But, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. The fact remains that the appellants failed to adduce any evidence in that behalf. It is also true that the claimants should adduce reliable evidence regarding income realised from crops and left to us, we would have remanded the matter to the reference Court with liberty to the parties to lead evidence regarding income realised from crops because average method adopted by reference Court is hardly satisfactory. But, in view of order of the Supreme Court which is quoted above, such a course is not permissible. As observed by the Supreme Court in the said order, oral evidence of the witnesses regarding income from crops cannot be rejected, as it is statutory duty of the Court to the society to subject the oral evidence to great scrutiny and thereafter to determine market price of the acquired land. We find that the facts before the Supreme Court and facts of the present case are almost identical. Here, in this case also, the reference Court has accepted the evidence of respondent respondent no.1 Mer Mulu Khimanand. The Supreme Court in similar circumstances relied upon the evidence of the Sarpanch and determined market value of the lands acquired which was subject matter of appeals before the Supreme Court. In his evidence, respondent no.1 i.e. Mer Mulu Khimanand claimed that the market value of the acquired lands was Rs. 20/- per bigha and the land was situated near village Veghli and there was also a well in it which was full of water althrough out the year. According to the said witness, he used to cultivate althrough out the year and used to earn substantial amount from the sale of agricultural produces. The witness further asserted before the Court that he used to take two crops per year and used to sow cotton, yield of which was 30 maunds per bigha and the price of cotton was Rs. 90/- to Rs. 100/- per maund. The witness further stated that when cotton was not sown, he used to reap the crops of millet, juver or groundnut and the yield per bigha was 30 maunds and the price of respective crops was between Rs. 70 to Rs. 80/- per maund. The witness also

claimed that he used to grow vegetables on the acquired lands. We may state that though the witness was subjected to cross-examination, this part of his evidence was not challenged by the appellants. On scrutiny of evidence of witness Mer Mulu Khimanand, we find that the conclusion drawn by the reference Court that the average annual yield per bigha was Rs. 1600/-, cannot be said to be erroneous in view of the order passed by the Supreme Court, which is quoted hereinabove. However, as per the direction of the Supreme Court, 50% ought to have been deducted towards cultivation expenses and multiplier of 10 ought to have been applied for the purpose of determining market value of the land acquired on the basis of yield. Calculated on the basis indicated by the Supreme Court, market value of the acquired lands would be Rs. 500/- per Are. However, as noted earlier, the reference court has determined market value of the acquired lands at Rs. 300/- per Are. The claimants have neither filed appeal claiming higher compensation than awarded by the reference Court, nor filed cross-objections in the appeal instituted by the State and another. Therefore, they are not entitled to more compensation than determined by the reference court, but the appeal filed by the State Government and another cannot be allowed when it is found that determination of compensation of acquired lands at the rate of Rs. 300/per Are is neither excessive nor unreasonable. On the contrary, we notice that the determination of market value by the reference court will have to be upheld in view of the order passed by the Supreme Court which is quoted earlier. Therefore, the State appeal on the question of determination of compensation payable to the claimants, cannot be accepted at all.

8. In the operative part of the impugned judgment and award, reference court has ordered that the acquiring authority shall pay additional compensation to the claimants as shown in Annexure-A attached to the judgment with running interest at the rate of 9% per annum for the first year from the date of award and for subsequent period till the date of payment, with running interest at the rate of 15% per annum with proportionate costs. A bare look at Annexure-A which forms part of the impugned award makes it evident that the additional compensation determined by the reference court as payable includes solatium on the additional amount of compensation payable under section 23(1-A) of the Act. Such directions could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 583. The pertinent observations made by the

Supreme Court in Para-7 of the reported decision are as under :-

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of S.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under S.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso."

Therefore, the operative part of the order in so far as it directs the appellants to pay the amount envisaged under section 23(2) of the Act on the additional amount of compensation payable under section 23(1-A) of the Act, is concerned, will have to be set aside and are hereby set aside.

For the foregoing reasons, the appeal is partly allowed. It is held that the claimants are entitled to compensation at the rate of Rs. 300/- per Are. It is further held that the claimants shall not be entitled to the solatium on the additional amount of compensation payable under section 23(1-A) of the Act. Rest of the award is not disturbed at all. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.

(patel)